

Europe Against Hegemony ?

International Law in Diplomatic Practice, 1713-1739

At the occasion of this Summer School on Legal Methods, focusing on well-known auxiliary methods from language theory (Deconstruction, post-structuralism), social science (Law and Economics, Game Theory), general scientific quantitative methods and models, I would like to introduce a respected and respectable, but still vivid discipline: diplomatic history.

My presentation will firstly introduce the main concepts of this discipline as they pertain to the historical study of international law (I). The second part will focus on the use of primary sources (II). Taken together, these elements allow for an interpretation of European international relations during 1713-1740 as well as a comparison with other (historical) periods. In a multipolar environment, states are bound to integrate law in their legitimating discourses, in order to convince the other players of the well-foundedness of their own views.

I. Diplomatic History and International Law: sources, methods & thinking patterns

Although the study of correspondence between “upper class”-diplomats has been condemned in the historic discipline by big names as the Annales-school “Czar” Fernand Braudel¹, it received renewed attention by integrating methodology from the social sciences and can now be considered to be multidisciplinary. It has shifted from micro-levels (relations between individuals and diplomatic courts) to macro-levels (entire political and cultural systems), through the extension of methodological tools and approaches.

Ragnhild Hatton (1913-1995) put the emphasis on the *horizontal* relations between monarchs, focusing on so-called “absolutist” princes in relation to their peers². In this way, national studies (often attached to biographies of “big men³”) could draw inspiration from the elements uniting those at the top of the European-integrated system of the Ancien Régime.

¹ Fernand Braudel et al., 'Pour ou contre une politicologie scientifique', *Annales. Économie, Sociétés, Civilisations*, XVIII/1 (1963), 119-32 at 119. “[...] *l'histoire diplomatique et politique, ondoyante, refuge des passions et des jugements gratuits, domaine du descriptif*”. Braudel, in this short contribution, welcomed the first edition of Raymond Aron's *Paix et guerres entre les nations* (the “Bible of French IR realism”) as a major work of international relations sociology. Following the reinterpretation the Annales School (Marc Bloch, Lucien Fèbvre, Emmanuel Le Roy Ladurie) made of social, economic and cultural history, Braudel called for a more “scientific” approach of political history, aspiring to discover long-term trends, whereas past historiography had been confined to the chronological analysis of shorter periods and sought legitimacy for every-day foreign policy in a remote past, which did not necessarily have anything to do with it. In practice (combined with the appearance of European integration, which sought a unifying narrative based on transnational socio-economic and cultural trends), this led to a decline in the history of international relations, confined to the universities of Strasbourg (Georges Livet), Paris-Sorbonne (Jean Béranger, André Corvisier, Pierre Renouvin) and the Institut d'Études Politiques (Alfred Grosser, Pierre Milza).

² Ragnhild Hatton, 'Louis XIV and His Fellow Monarchs', in Ragnhild Hatton (ed.), *Louis XIV and Europe* (London: MacMillan, 1976), 16-59.

³ Max Braubach, *Die Bedeutung der Subsidien für die Politik im Spanischen Erbfolgekriege*, ed. Sebastian Hausmann (Bücherei Der Kultur Und Geschichte; 29; Bonn: Kurt Schroeder, 1923) 204, Max Braubach, *Prinz Eugen Von Savoyen: Eine Biographie* (II; München: Oldenbourg, 1965) 496.

Emphasizing the study of networks, cultural-anthropological habits and mentalities⁴, Lucien Bély (Paris IV-Sorbonne) produced a different reading of the sources produced at the Utrecht Peace Congress (1712-1713), which ended the pan-European War of the Spanish Succession⁵. Precisely the aspects neglected by traditional historians gave the opportunity to paint a richer image of international relations. In a later work, Bély put the emphasis on the norms governing the *Société des Princes* as a unifying idiom for Europe's crowned heads⁶. He also brought the monarch's servants into the spotlights, such as foreign secretary Jean-Baptiste Colbert de Torcy (1665-1746), cousin of finance minister Jean-Baptiste Colbert (1619-1683), or his officials Nicolas-Louis Le Dran (1686-1774) and Antoine Pecquet (1704-1762⁷).

What does all this mean for legal history ? So far, the sub-discipline of the history of international law knew a revival in the nineties and early 2000s, thanks to the works of Heinz Duchhardt (Univ. Mainz), Randall Lesaffer (Univ. Tilburg)⁸ and the foundation of the *Journal of the History of International Law – Journal d'histoire du droit international* (Max Planck Institut für Auswärtiges Öffentliches Recht und Völkerrecht - Heidelberg). However, it has concentrated mainly on two sources of international law: treaties and international doctrine (which can be easily plugged in to the mainstream of “big name”-studies in general legal history, since most of the Ancien Régime-thinkers were “all-round”⁹).

There still is a huge research gap to be covered. Treaties are expressions of crystallized diplomatic talks and generally meant to temporarily end a period of international tension or armed conflict. However, in peaceful periods, such as the one between the Treaties of Utrecht (11 April 1713¹⁰) and the outbreak of

⁴ See for instance the recently edited François De Callières, *De la manière de négocier avec les souverains: de l'utilité du choix des ambassadeurs et des envoyés et des qualités nécessaires pour réussir dans ces emplois* (Édition critique Par Alain Lempereur; Genève: Droz, 2002) 247.

⁵ Lucien Bély, *Espions et ambassadeurs au temps de Louis XIV* (Paris: Fayard, 1990) 905.

⁶ Lucien Bély, *La Société des Princes XVIIe-XVIIIe Siècle* (Paris: Fayard, 1999) 651.

⁷ Antoine Pecquet, *Discourse on the Art of Negotiation [Discours Sur l'art de négocier]* - Translated by Aleksandra Gruzinska and Murray D. Sirkis (Currents in Comparative Romance Languages and Literatures; New York: Peter Lang Publishing Inc., 2004 [1737]).

⁸ Heinz Duchhardt, Matthias Schnettger, and Martin Vogt, *Der Friede Von Rijnswijk 1697* (Veröffentlichungen Des Instituts Für Europäische Geschichte Mainz. Abteilung Universalgeschichte.; Mainz am Rhein: Von Zabern, 1998) VIII + 340, Randall Lesaffer, *Europa: Een Zoektocht Naar Vrede? : 1453-1763 En 1945-1997* (Leuven: Universitaire Pers, 1999) XXXIII + 694, Randall Lesaffer (ed.), *Peace Treaties and International Law in European History : From the Late Middle Ages to World War One* (New York: Cambridge university press, 2004) XX + 481.

⁹ We can give the examples of Hobbes, Leibniz, Pufendorf or Wolff, who were all natural law philosophers and did not limit their field of activity to international relations. Abbé de Mably (1709-1785), brother of Enlightenment intellectual Condillac, is more seen as a precursor of the revolution, although his work is more historical and descriptive. See Abbé De Mably, *Le Droit Public de L'europe fondé sur les Traités* (Genève: Compagnie des Libraires, 1748) 432 + 31. “Positivist” authors generally suffered from the attention given to the first category. See for instance Samuel Rachel, *De Iure Naturae Et Gentium Dissertationes*. Ed. And Introd. By Ludvig Von Bar (The Classics of International Law [5,1]; Washington: Carnegie Institute of Washington, 1916 [1676]) 16 + 335. Réal de Curban (1682-1752) was awarded a biographical notice only recently, see Abbé De Burlé Réal De Curban, *La Science Du Gouvernement, T. 5: Contenant le droit des gens, qui traite des ambassades; de la guerre; des traités; des titres; des prérogatives; des prétentions, & des droits respectifs des souverains* (Paris: Les libraires associés, 1764) 870, J.M. Mattei, *Histoire du droit de la guerre, 1700-1819: introduction à l'histoire du droit international : avec une biographie des principaux auteurs de la doctrine internationaliste de l'antiquité à nos jours* (Collection d'histoire du droit. Thèses et travaux; Aix-en-Provence: PUAM, 2006) at 1108-110.

¹⁰ In reality, due to the bilateral nature of the congress, the Peace of Utrecht consisted of multiple bilateral agreements, whose material basis is to be found in the Franco-British preliminaries for peace, concluded in London on 27 September O.S./8 October N.S. 1711 (Jean Du Mont De Carels-Croon, *Corps Universel Diplomatique Du Droit Des Gens* (VIII; Den Haag: Pieter Husson & Charles Levier, 1731) at Part One, 281-84. [Further: Du Mont]. The political process of the Franco-British couple twisting the other parties' arm only finished at the Peace of Rastatt with the Emperor (6 March 1714, Du Mont, VIII/1, No. CLXX, 415-422) and that of Baden with the Empire (7 September 1714, Du Mont, VIII/1, No. CLXXIV, 436-444). For the Utrecht Treaties: Du Mont, No. CLIV 356-377 (11 April 1713: France/Prussia, France/Savoy, France/States-General), No. CLXIV, 393-399 (2 July O.S./13 July N.S., Britain/Spain), No. CXLVI, 401-404 (13 August, Spain/Savoy), No. CLXXV, 444-447 (6 February 1715, Portugal/Spain).

the War of the Austrian Succession (16 December 1740), crises are missing and permanent diplomacy plays a far more important part. Emmanuel le Roy Ladurie labeled this period “*les trente heureuses*”¹¹, where prudent personalities of great quality managed to convey their reciprocal and cordial esteem to the European System as a whole.

Numerous 17th and 18th-century authors put forth the idea that the goal of international law is to ensure peace and stability between nations. Violators could be punished collectively, as happened in the coalition wars against Louis XIV (1638-1715). When we consider the whole of the Ancien Régime as legal historians or as international lawyers, we cannot ignore the period where actual state behaviour seems to conform with principles such as Balance of Power (when a player accumulates too much power, the others gather preventively against him), mediation (resolution of bipolar conflict through the introduction of a third party) and legal equality (following out of the declining power inequalities between partners).

By encoding diplomatic correspondence (as a measure of state behaviour) according to the references to the prevailing law and global international system, we can demonstrate the conformity between state behavior and the abovementioned principles. Over time we can assess the impact of these norms on state behavior. The following case study will illustrate this approach. I would like to discuss a historical case that demonstrates how diplomatic correspondence hosts discussions marked by the prevailing law and the global international system, that would otherwise remain hidden in seldom consulted publications.

II. Case: a diplomatic expedition to the Era of “Walpole and Fleury”

A. Background: a game of four players

Franco-British collaboration was essential to maintain European stability for thirty years after the end of the War of the Spanish Succession (1700-1713). The war was the apex of all European coalition wars against hegemonic domination. Charles V (1500-1558) and his successors tried to establish the dominium of Habsburg over Europe. France aspired to the same, starting with Cardinal Richelieu (1585-1642). Contrary to a certain *communis opinio* amongst jurists, this struggle did not end with the Peace of Westphalia (1648)¹². The partition of the Spanish Monarchy, which was the major international problem for the whole late seventeenth century, did not come about until The Treaties of Utrecht¹³.

In this latter struggle, France and Britain had been antagonists, rather than allies. This changed when Charles VI of Habsburg (1685-1740) took over the crown of the Holy Roman Empire in 1711. He was the Austrian pretender to the Spanish inheritance and would, if the coalition against Louis XIV won, become a new “Charles V”. Subsequently, Britain deserted him. The movement had an equal impact on the European System as the famous “Diplomatic Revolution” of 1756 at the start of the Seven Years War¹⁴.

France and Britain intended to supervise the compromise they jointly imposed at Utrecht. Aside from the territorial aspects of the settlement, the compromise entailed that:

¹¹ Emmanuel Le Roy Ladurie, *L'ancien Régime. II: L'absolutisme bien tempéré (1715-1770)* (Collection Pluriel; Paris: Hachette, 1991) 441 at 93.

¹² Klaus Bussmann and Heinz Schilling (eds.), *1648. War and Peace in Europe* (Münster/Osnabrück: Council of Europe, 1998) 497.

¹³ Jean Béranger, 'Le conflit entre les Habsbourg et les Bourbons (1598-1792)', *Revue d'histoire diplomatique*, /3 (2002), 193.

¹⁴ Derek McKay and Hannish M. Scott, *The Rise of the Great Powers 1648-1815* (London: Longman, 1983) 378 at 110.

- The French monarchy retained almost all of Louis XIV's conquests (which basically amounted to a buttressing of the Northern frontier)
- Britain obtained control of the Mediterranean (Gibraltar, Minorca), access to Brazil (through an alliance with Portugal) and the monopoly on the black slave trade (*asiento de negros*)
- Present-day Belgium ("the Southern Netherlands") and large parts of Italy (Naples, Milan, Sardinia) befell on the Holy Roman Emperor
- The Dutch Republic retained barrier fortresses in the Austrian Netherlands against France, but lost the global commercial advantage to Britain and France
- The Spanish Monarchy lost almost all European possessions, but retained its colonies in America, principal source of profit for the European economy; Philip of Anjou (1683-1746), grandson to Louis XIV, climbed on the throne

Utrecht thus generated two "winners" (France/Britain) and two "losers" (Spain/Austria). On a technical plan, there was no peace treaty between Philip V of Spain and Charles VI of Austria. A mere neutralization convention had been concluded regarding the Italian peninsula¹⁵. Two scenarios were possible

- Since the "losers" only had aspirations to the other's territories (in the case of Charles VI: the whole of the Spanish Monarchy; in that of Philip V: the lost Spanish dominions in Italy): war between Spain and Austria
- Since the two "winners" would prevent such an outcome, which would amount to a European conflagration: a league of "losers" against the "winners"

Those two scenarios came into play at two occasions. The first time in 1717-1718, when Spain invaded Sardinia and Sicily. France and Britain reacted through their most prominent politicians, Cardinal du Bois (1656-1723¹⁶) and James Viscount Stanhope (1673-1721¹⁷). They drafted an alliance treaty containing the conditions on which Spain had to evacuate Italy. The victimized Emperor adhered to it, followed by the duke of Savoy. This "Quadruple Alliance"¹⁸ obliged Philip V, after some minor military interventions in the Mediterranean, to accept their collective conditions for peace.

A final treaty ought to be concluded at the Congress of Cambrai, which opened formally in 1722, but did not start its material negotiations until 1724. As the proceedings went on, Spain and Austria turned away from the Franco-British mediators and discovered they disliked each other less than they thought. The second scenario realized itself in Vienna, in April 1725¹⁹, through the intervention of the Dutch

¹⁵ Convention between the belligerent parties, by mediation of the British plenipotentiaries at the Utrecht Congress, regarding the evacuation of Catalunya and an armistice in Italy, 14 March 1713, Du Mont, VIII/1, No. CXLVIII, 327-330.

¹⁶ Guillaume Cardinal du Bois is one the rare examples of class mobility to the summit of the state hierarchy in the Ancien Régime, thanks to the ecclesiastical *cursus honorum* he pursued. See Jean-Louis Aujol, *Le Cardinal Dubois, ministre de la Paix* (Paris: Éditions du bateau ivre, 1948) 231, Guy Chaussinand-Nogaret, *Le Cardinal Dubois, 1656-1723 ou une certaine idée de l'Europe* (Paris: Perrin, 2000) 257, Jean-Pierre Thomas, *Le Régent et le Cardinal Dubois ou l'art de l'ambiguïté* (Paris: Payot, 2004) 251. Dubois is one of the famous examples of "secret" or "parallel" diplomacy: he entertained a separate correspondence with the Spanish Court, as Émile Bourgeois revealed. See Émile Bourgeois, *La diplomatie secrète au XVIIIe siècle, ses débuts. III. Le secret de Dubois, Cardinal et Premier Ministre* (Paris: A. Colin, 1910) 448.

¹⁷ James 1st Viscount Stanhope, Secretary of State for the Northern Department and designer of a general peace plan complementary to the Utrecht treaties, encompassing as well the Southern (Mediterranean) as the Northern (Baltic) theatres, see Basil Williams, *Stanhope. A Study in Eighteenth-Century War and Diplomacy* (Oxford: Clarendon Press, 1932) XV + 478.

¹⁸ Treaty of Friendship and Alliance between Emperor Charles VI, King Louis XV and King George I, London, 22 July O.S./2 August N.S. 1718, Du Mont, VIII/1, No. CCII, 531-541.

¹⁹ Peace Treaty between Emperor Charles VI and King Philip V, Vienna, 30 April 1725, Du Mont, VIII/2, No. XXXVI, 106-125.

adventurer Ripperda (1680-1737²⁰). The second scenario, however, proved to be as short-lived as the first. The coalitions formed by “winners”²¹ and “losers”²² built up military capacity, but at the Preliminaries of Paris (31 may 1727), Cardinal Fleury (1653-1743²³) could call together the contestants for a new Congress in Soissons.

In what followed, France and Britain grew gradually apart²⁴. In 1733, Britain and the Dutch Republic remained aloof while Fleury decided on an invasion of Austria, together with Spain²⁵. This could have meant the end of the stable system. However, thanks to the restrained campaigns (fought with senescent generals who earned their reputation in the War of the Spanish Succession), France and Austria settled for another treaty, amending once more the Utrecht system.

So much for the broader political background, but is this pertinent to the study of international law ? After all, changing alliances pointed more to treaty breaches, or even the irrelevance of the law, than to its observation. However, if we maintain the thesis of the upholding of international peace and stability, we should look differently at treaty *normativity*. They are but formal crystallization points. As such, they are meant to express consensus after a period of negotiation. They carry elements determining state behavior, but cannot capture all of them. How did diplomats avoid a European war in a period as long as 1713-1739? The answer is to be found in living historical sources, those of diplomatic correspondence.

B. What diplomats tell us

Throughout “*les trente heureuses*”, there is a remarkable continuity in personnel at the British embassy in Paris. Because of the close collaboration between both countries, almost all European affairs passed through the hands of this major diplomatic post, where change was rare. The Earl of Stair (1714-1720), Luke Schaub (1721-1724), Horace Walpole (1724-1730) and the Earl of Waldegrave (1730-1740) represented George I (1714-1727) and George II (1727-1760) at the court of the French Regent (1715-1723) and Louis XV (1715-1774).

If the Utrecht order was put at risk, it was mainly in the three periods mentioned above. How did they view this passing of international crises ?

²⁰ Johan Willem van Ripperda, served as Dutch Ambassador in Madrid (1715-1718), but changed his religion and became a prominent figure at Philip V's court. Was made prime minister and royal favorite after the Treaty of Vienna (1725), but fell the next year. Fled to British ambassador Stanhope (lord Harrington)'s residence, but was nevertheless arrested (in breach of international law) and kept prisoner at the Alcázar of Segovia, from which he escaped to Britain (1728) and finally Morocco. Gabriel Syveton, *Une cour et un aventurier au XVIII^e cle. Le Baron de Ripperda* (Paris, 1896) XIII + 309, Sytze Van Der Veen, *Spaanse Groninger in Marokko: De Levens Van Johan Willem Ripperda (1682-1737)* (Amsterdam: Bert Bakker, 2007) 676.

²¹ League of Hannover, 3 September 1725, containing France, Britain and Prussia, later rejoined by Denmark, Sweden and the Dutch Republic.

²² Joined by Czarina Catharina I of Russia, 6 August 1726.

²³ André-Hercule Cardinal de Fleury, see Guy Chaussinand-Nogaret, *Le Cardinal de Fleury: le Richelieu de Louis XV* (Paris: Payot, 2002) 241, Marie-Elisabeth-Edmond-Maxime Comte De Sars, *Le Cardinal de Fleury : apôtre de la Paix* (De L'histoire; Paris: Hachette, 1942) 252, Louis D'illiers, *La politique extérieure de Fleury depuis son arrivée au pouvoir jusqu'au Traité De Séville: 1726-1729* (Paris: École libre des sciences politiques, 1903), Paul Vaucher, *Robert Walpole et la politique de Fleury (1731-1742)* (Paris: Plon, 1924) II + XII + 473, Arthur McCandless Wilson, *French Foreign Policy During the Administration of Cardinal Fleury: A Study in Diplomacy and Commercial Development* (Harvard Historical Studies; 40; Cambridge (Mass.): Harvard University Press, 1936) IX + 433.

²⁴ Jeremy Black, *George II, Sir Robert Walpole and the Collapse of the Anglo-French Alliance 1727-1731* (Newcastle: Black, 2005) 234.

²⁵ J.L. Sutton, *The King's Honor and the King's Cardinal: The War of the Polish Succession* (Lexington: University Press of Kentucky, 1980) VI + 250.

1. The Quadruple Alliance (1717-1718)

If we had to analyze the crisis of the Quadruple alliance in published sources, we would come to the following narrative. In view of the absence of a formal peace treaty between Charles VI and Philip V, the latter decided to end the armistice and to claim back his territories in Italy, which he ruled in 1700, on his accession to the Spanish throne. An expedition invaded the isle of Sardinia, which Philip was forced to cede to Austria at the Treaty of Rastatt²⁶. In the meanwhile, the Emperor appealed to France and Britain to help uphold the Treaties for Italy. The next year, Spain invaded Sicily as well, ceded to the Duke of Savoy in 1713 with a right of reversion²⁷. Dubois and Stanhope responded to the Emperor's call, by drafting a bilateral alliance (18 July 1718). The Emperor and Savoy were offered a delay of three months to accede to the instrument, which was materialized in the Treaty of London of 2 August 1718. The Spanish King was offered this possibility as well, but refused to do so. Admiral George Byng subsequently sank the Spanish fleet off Cape Passaro (near Sicily), a pure act of aggression, since Britain was not at war with France²⁸.

When Philip did not adhere to this treaty, France and Britain jointly declared war (17 December 1718²⁹). After an invasion of the Basque country (Guipuzcoa) and Catalunya by the French, and of Galicia by the British, Philip V decided to lay off his Prime Minister, cardinal Alberoni and acceded to the Quadruple Alliance by the Treaty of The Hague, 17 February 1720.

The classic story is thus one of armistice, rupture, alliance, war and preliminaries. However, this cycle was qualitatively much less disturbing than what happened 17 years before, at the outbreak of the War of the Spanish Succession. The speed with which events followed each other, pointed to a much less acrimonious relationship. The disputes themselves were not resolved until twenty years later, but the consensus prevailed that the use of force was not a means to settle them.

The Earl of Stair³⁰, renowned for his chasing of the supporters of the Pretender James Stuart (son of the chased King James II, victim of the Glorious Revolution), was also an artisan of the Franco-British alliance. George I needed French support in order to remove the Pretender from Britain³¹. On the other hand, Philip of Orléans (1674-1723), the French Regent while Louis XV (°1710) was under the age of thirteen, needed all possible support against those who wished to see Philip V of Spain (as second grandson of Louis XIV) on the French throne. The *legal link* between the two partners was undisputedly the Peace of Utrecht. George's succession to the British throne was guaranteed by France, Philip's renunciation was enforced by Britain. Short-term political interest thus joined the medium and long-term construction of the European system. Stair teamed up with abbé du Bois, who considerably influenced Philip's diplomacy³².

²⁶ Elisa Mongiano, *"Universae Europae Securitas" I Trattati Di Cessione Della Sardegna a Vittorio Amedeo II Di Savoia* (Torino: Giappichelli Editore, 1995) 130.

²⁷ Instrumento de la Cession del Reyno de Sicilia, hecho por el Serenissimo Duque de Anjou como Rey de España a Victor Amadeo Duque de Saboya por el y sus Descendientes masculinos per perpetuamente, 10 June 1713, Du Mont, VIII/1, No. CLXII, 389-392.

²⁸ Moore, 18.

²⁹ French Manifesto in: Ordinance of 9 January 1719, Du Mont, VIII/2, No. III, 7-8.

³⁰ John Dalrymple, 2nd Earl of Stair (1673-1747). For biographies of all British diplomats, see Oxford Dictionary of National Biography. Oxford University Press. 2005; online edition, Jan 2008 [<http://www.oxforddnb.com>].

³¹ In the Franco-English Treaty concluded by Dubois and Stanhope at Hannover, 28 November 1716.

³² *"Il nous seroit très important que Monsr l'abbé du Bois fût mis à la teste des Affaires Etrangères"* (Stair to James Craggs, Secretary of State for the Southern Department, Paris, 20 August 1718, N.A. (National Archives, Kew), S.P. (State Papers) Foreign, 78-162 (France, 1718), f. 51v.). The letter is in French, because it was to be laid before king George I, who was originally a German prince and did not know English when he arrived in Britain, but could read and write

When the Belgian general Marquis de Lede invaded Sardinia and Sicily, the Franco-British *entente* was at its apex. Stair and the Regent regularly met and concurred on most issues³³. During the Spanish invasion of Sicily, the initiators of the Quadruple Alliance decided together on the stand to take with the Spaniards: “*je suis d’opinion plus qu’un homme au monde, qu’il faut bien se garder de departir des fondements de Nôtre Traité [...] nous n’avons rien appréhendé d’une negotiation qui commence par mettre l’Empereur en possession de Messine [...] il n’auroit pas été prudent d’effaroucher le Roy de Sicile, par des difficultez qui n’auroient pas été à leur place, et qui auroient pu fournir au dit Roy un Pretexte de ne pas faire une Demarche*”³⁴.

This conduct was explicitly legitimated by the Utrecht Treaties, serving as a generally accepted framework for all European partners. When James Stanhope personally left for Spain in order to convince Cardinal Alberoni to give up his aggressions in Italy and to accede to the Quadruple Alliance, Stair repeated the foundation of their joint diplomatic action with the court of France: “*If the Cardinal did not only refuse to enter into our treatys but continued to attack our ally whom by the Treatys of Utrecht Brittain & France are obliged to protect & to warrant in the possession of Sicily*”³⁵.

But, given these premises, how could one interpret the Quadruple Alliance? After all, it consisted of a trilateral agreement, not giving rise to obligations for non-adhering third parties. “*In that case [Alberoni refuses to accede to the QA] H.R.H. [The Regent] looked upon the King our Master & the most Christian King [Louis XV] to be entirely disengaged from all the offers made to H.C. Majesty in the Treaty [of the QA] & tied by Honour & Obligation to make use of the means they had in their hands to protect and support the King of Sicily [The Duke of Savoy, who was made King of Sicily by Philip V’s cession in execution of the Utrecht Treaties]. Inter partes, there was no doubt regarding its binding force: “Monsieur le Regent me dit, qu’il estoit tenu par les Traittés de la Quadruple Alliance a faire ce que je souhaitois [...] a faire cause commune avec le Roy”*. This was a far from trivial point of view. The Regent’s court had been undermined by a conspiracy uniting the party of Louis XIV’s illegitimate son the Duke of Maine and the “legitimists” who thought Philip V, as grandson, was less remote from the throne than Philip of Orléans, nephew to the deceased king. The “Cellamara plot” was discovered in December 1718³⁶. The Regent did not have full support in case of an eventual war, but affirmed to Stair he would take the necessary steps, in virtue of the in essential bicephal Quadruple Alliance: “*[...] en cas qu’à l’occasion des operations faites par nostre flotte, pour empêcher la perte de la Sicile, les [4r] Espagnols declarassent la guerre à la grande bretagne, ou saisisent les effets des sujets du Roy, en ce cas le Roy Tres Chretien*

French, as every head of state of the time. Possible spelling particularities or mistakes are on the account of the Earl of Stair.

It would not be correct to present the then abbé Dubois as foreign secretary. During the first years of Philip’s regency, he needed to incorporate different tendencies of Louis XIV’s court to gain a political base in Versailles. Philip abolished the system of the Secretaries of State and instituted a Council system, as was customary in the Habsburg monarchies (*polydynodie*). Once his group of supporters managed to impose its preeminence, the Secretaries of State returned. On 24 November 1718, Philip of Orléans abolished the councils and appointed Dubois as Secretary for Foreign Affairs (Bertrand Fonck, ‘Du Blé d’Huxelles, Nicolas’, in Lucien Bély et al. (eds.), *Dictionnaire des ministres des Affaires Étrangères* (Paris: Fayard, 2005), 103-10 at 108). At the time of the letters I discuss in this paper, Dubois was a member of the *conseil des affaires étrangères*, but Louis XIV’s marshal d’Huxelles presided it. *De facto*, the abbé (who was only to become a cardinal on 16 July 1721) held more power than the marshal, who was constantly ignored and bypassed by the Regent.

³³ For instance, when negotiations were ongoing in the Dutch Republic, to exert an act of accession to the Treaty of the Quadruple Alliance, the French and British ambassadors’ declarations differed. Stair managed to convince the Regent to adapt his version to the British, in order to conserve the force of a common offer (“*S.A.R., à la fin, est convenüe, qu’il fallout, pour faire reüssir la Negotiation, acceder a nostre declaration, et Elle m’a promis qu’Elle enverroit comme hier des ordres a Monsr de Morville, de faire la même declaration que nos ministres avoient déjà faits*”, N.A., S.P. Foreign, 78-162 (France, 1718), f. 51r.)

³⁴ N.A., S.P. Foreign, 78-162 (France, 1718), ff. 50r-v, Stair to James Craggs, Paris, 20 August 1718.

³⁵ N.A., S.P. Foreign, 78-162 (France, 1718), f. 56v (both quotations), Stair to James Stanhope, Paris, 20 August 1718.

³⁶ Voltaire attributed the discovery to the fact that Cellamara’s messenger, who was to bring correspondence to Madrid, visited a well-known Parisian prostitute, who was acquainted to abbé Dubois (Moore, 149).

*feroit la cause commune avec le Roy, et declareroit la guerre a l'Espagne, et que si le cas le requeroit, S.A.R. s'obligerait de faire une Convention en forme, dans les termes de la dite declaration*³⁷”.

The absence of binding obligations to non-adhering parties proved to be the main reason for hesitations regarding support to King Victor Amadeus of Savoy-Sicily (1666-1732). This monarch appealed to the Treaties of Utrecht and the *spirit* of the Quadruple Alliance, when he called for help during the Spanish invasion. However, he did not accede to the *letter* of the latter Treaty, until he definitively lost the rich island of Sicily. Stair made the distinction throughout his correspondence: without a formal accession, Victor Amadeus –who had proven in the past decades he was an unreliable partner³⁸–, implying the abandonment of Sicily for the poorer Sardinia, there could be no question of direct help to Turin³⁹.

The invasion of Sicily proved to be the last and unsuccessful attempt by Alberoni to disturb the European equilibrium. Admiral George Byng destroyed the Spanish fleet at Cape Passaro. His instructions passed through Stair as well. In view of the bicephal intervention (French land troops in Catalunya/Guipuzcoa, 1719, British fleet in the Mediterranean), Byng can be said to have acted on behalf of both countries' instructions, and not on those of Britain alone. In his letter of 9 August 1718 to Byng, Stair states the following regarding Byng's orders: “*J'ay eu l'honneur de voir S.A.R. Monseignr le Regent, qui est d'opinion, qu'il est de l'interêt commun, et entierement conforme à l'Esprit et aux Veuës de la Quadruple Alliance, qu'on venoit de signer à Londres*”⁴⁰. Where the Parliamentary (Tory) opposition in Britain argued this action was a pure act of aggression against Philip V, with whom a peace treaty had been signed at Utrecht, the justifications put forward by the Franco-British alliance were multilateral and implied *norm hierarchy*: when Philip V violated his Peace Treaty with Victor Amadeus of Savoy, Britain and France could intervene without a declaration of war, as garants of the European system. Moreover, Stair explicitly points to the desirability of delaying an attack on the Spanish fleet until the diplomatic mediation James Stanhope was to effectuate in Madrid had taken place⁴¹.

³⁷ N.A., S.P. Foreign, 78-162 (France, 1718), ff 3v-4r, Stair to James Craggs, Paris, 3 August 1718. Three days later, the Regent ordered Antoine Pecquet, *premier commis* in the Ministry for Foreign Affairs, to draft a document on the basis of a model presented by Stair (Ibid., f. 13r, 6 August 1718). At the end of 1718, France and Britain declared war together. On Pecquet, see Pecquet, *Discourse* and J.-P. Samoyault, *Les Bureaux du secrétariat d'état des Affaires Étrangères sous Louis XV* (Paris, 1971) at 244-55.

³⁸ Victor Amadeus was notorious for changing sides between Louis XIV and coalitions of European monarchs against him, during at the end of the Nine Years War and during the War of the Spanish Succession. “*Il ne faut pas laisser sentir au Roy de Sicile, qu'on a l'intention de le secourir contre les Espagnols sans qu'il accede à notre Traité, à cause que'une telle apparence pourroit luy donner lieu de tenter de meliorer les conditions qui luy sont offertes par le Traité, par une nouvelle négociation, ce qui nous seroit très prejudiciable dans les circonstances presentes, ou nous avons besoin de son accession immédiate, pour déterminer l'Espagne à conclure promptement*”³⁸ (N.A., S.P. Foreign, 78-162 (France, 1718), ff. 3r.-v., Stair to James Craggs, 3 August 1718).

³⁹ N.A., S.P. Foreign, 78-162 (France, 1718), f. 14r, Stair to James Craggs, Paris, 6 August 1718. Count Provana, Savoyard ambassador in Paris, tried to present the accession of Victor Amadeus as impending, but neither the Regent nor Stair took this as a satisfying response. This opinion is reflected by Réal de Curban in his *Science du Gouvernement*: “*Les Plénipotentiaires doivent bien se garder de croire qu'on puisse assurer des conditions importantes, sur la foi de quelques lettres que les Princes, qui accordent ces conditions, & qui ne voudroient pas qu'elles parussent, offrent quelquefois d'écrire au Souverain en faveur duquel ces conditions sont stipulées. Ce n'est point par des lettres que la foi des conventions peut être assurée, c'est par des Traités autentiques, surtout lorsque les conditions ne sont pas personnelles, ou qu'on traite avec un Prince dont l'Etat n'est pas purement monarchique*” (Chapter III, Sect. I, Art. VIII/V (on the redaction of Treaties ; Abbé De Burlé Réal De Curban, *La science du gouvernement* at 562).

⁴⁰ N.A., S.P. Foreign, 78-162 (France, 1718), f. 27r, Stair to James Craggs, Paris, 9 August 1718.

⁴¹ Ibidem, f. 27r (post scriptum). “*S.A.R. est d'opinion, que si les Espagnols n'attaquassent pas Messine ou Syracuse, il seroit bien d'éviter les Hostilités, pour attendre l'effet de la Negociation de Lord Stanhope à Madrid*”. Marquis de Lede, however, laid siege before the Citadel of Messina, when admiral Byng reached the Sicilian coast, one day after Stair sent his letter (George Moore, *Lives of Cardinal Alberoni and the Duke of Ripperda and Marquis of Pombal, Three Distinguished Political Adventurers of the Last Century Exhibiting a View of the Kingdoms of Spain and Portugal During a Considerable Time of That Period* (London: J. Rodwell, 1814²) 473 at 90).

2. The Ripperda Treaty (1725)

If we take another *arrêt sur image* or fix a moment in our case, the Ripperda Treaties of 30 April 1725 would be a good example. The crisis provoked by the Spanish/Austrian agreement was the consequence of the ineffectiveness of the Congress of Cambrai. The delegates of all European powers, gathered under the direction of France and Britain, could not agree on a peace treaty covering the outstanding issues between Philip V and Charles VI. One would thus expect the relief to be general once the two antagonists of 1717-1718 concluded a peace treaty.

Once again, a formal legal analysis would be incapable of catching the true nature of the parties' behavior. The inclusion of a marriage proposal between a son of Philip V and the eldest daughter of Charles VI generated a furious reaction, comparable to that of Charles VI's accession to the Imperial throne in 1711. It could have led to a major war. The armed invasion of Sardinia and Sicily in 1717-1718 was much less likely to threaten stability than the simple conclusion of a Treaty of Peace and Alliance at this time. In the former case, the King of Spain stood alone against an overwhelming alliance. Although there was a formal declaration of war, the risks for escalation were very limited.

We can observe British reactions at three stages: Paris, where Horatio Walpole⁴² was the ambassador, Vienna, where Saint-Saphorin represented George I and Cambrai, where the plenipotentiaries Withworth and Marchmont saw the Congress falling apart.

I. Horatio Walpole and the instructions from Whitehall

As was the case with most congresses of the period, the bulk of "hard" negotiations were carried out beforehand or simultaneously on a bilateral basis, at court, where the individual sovereign could be reached. When Spain and Austria publicly proclaimed they had evaded Franco-British mediation, it was more Horatio Walpole's (ambassador in Paris) task to work out a strategy with the French prime minister the Duke of Bourbon (Louis XV being only 15 years of age, technically major but in the facts not participating in government). Whitehall was informed of the transactions at Vienna by ambassador St-Saphorin and communicated its instructions to Walpole, whose task it was to keep a unity of action between France and Britain.

The Duke of Newcastle⁴³, Secretary of State for the South, remained within the framework sketched by Stair. Conservation of *publick Peace and Tranquillity* equaled conservation of the Utrecht and Quadruple Alliance framework. As such, an accommodation between Spain and Austria contributed to general pacification.

However, the circumstances created a suspicion that Spain had deliberately violated the basic norms of the European system. Its conduct in the past Cambrai negotiations was very difficult and demanding. To have dropped all *a priori* all of a sudden, raised questions of a possible secret treaty⁴⁴. In view of the preceding uncertainty, France nor Britain could guarantee the new order created by the Ripperda Treaty, *being made in direct opposition to the alliances entered into between the two Crowns and those two powers, & directly contrary to the methods already begun for adjusting the differences between the two last*⁴⁵. In other words, although formally a peace between Spain and Austria would have been more than welcome, Newcastle suspected a

⁴² Horatio Walpole, 1st Baron Wolverton (1678-1757). Ambassador in The Hague (1716-1722), Paris (1723-1730) and again The Hague (1734-1740).

⁴³ Thomas Pelham-Hollis, 2nd Duke of Newcastle (1693-1768). Prominent Whig politician throughout all governments from Robert Walpole's to his own cabinet, which fell in 1762, Secretary of State for the Southern Department 1724-1746.

⁴⁴ N.A., S.P. Foreign, France Jan-Jun 1725, f. 105r: "*In all probability there are two treatys concluded, the one publick and pretty agreeable to the Quadruple Alliance, the other private, wherein are contained those conditions which have induced Spain to take this step, and which will depend upon ye Emperor for their execution*". Newcastle to Horatio Walpole, 1 May 1725 N.S.

⁴⁵ Ibid., f. 105r.

material breach with regard to the *spirit* of the balance of power-system, blaming Philip and Charles' *unhandsome behaviour*. The general equilibrium had been elaborated by James Stanhope's peace plans for the South (Mediterranean) and the North (Baltic) and implied *the strictest union between England and France*.

II. Saint-Saphorin in Vienna and Sinzendorf's "ancien système"

Newcastle's suspicions were well founded. Elisabeth Farnese, Philip V's second wife, provided her husband with legal pretensions to the duchy of Parma-Piacenza and the Grand-Duchy of Tuscany. In both cases, the ruling family (Farnese resp. de'Medici) was about to die out. Elisabeth had ties to both and could claim the succession for one of her children. The Infant Carlos (°1716) was put forward as new duke. To guarantee the succession, the Treaty of the Quadruple Alliance foresaw the installation of 6 000 (neutral) Swiss garrison troops. The Emperor accepted the principle, but clung to his right to appoint the successors in those Imperial fiefs (*Reichsitalien*) himself⁴⁶. Allowing foreign troops while the ruling vassals were still alive, was out of the question. In other words, he accepted the Quadruple Alliance as preliminaries or starting point of the Congress, but refused to execute them unless other compensations were foreseen⁴⁷.

Don Carlos' rights had been guaranteed by both mediators and stood a fairer chance than with Charles VI⁴⁸. However, they did not constitute the main reason for Queen Elisabeth's move. Vienna promised her children something of far greater importance than the mere succession in Parma-Piacenza and Tuscany: the Imperial Crown. Through the marriage of the infant Don Carlos with archduchess Maria Theresia, Elisabeth's son would become emperor. Were Philip's last remaining son, the Infant Ferdinand, to de cease, he would inherit the Spanish monarchy too⁴⁹. Even worse, if the sickly Louis XV came to pass away before producing a legitimate male heir, the Spanish Bourbons could rule in Versailles, Madrid and Vienna. In other words, the spectre of Charles V's *Monarchia Universalis* rose again⁵⁰.

⁴⁶ The Emperor's competence to decide in these matters was not disputed by the other powers and recognized as such in the treaty of the Quadruple Alliance, art. V ("Sacri Romani Imperii Feudus masculinis; Jean Rousset De Missy, *Les Intérêts Présens Des Puissances De L'europe, Fondez Sur Les Traitez Concluz Depuis La Paix D'utrecht Inclusive ment, & Sur Les Preuves De Leurs Préten tions Particulieres* (La Haye: Adrien Moëtjens, 1733) 608 + 768 at 26, 61 and 91). However, this decision, by nature, touched upon the European public order. Thus, Charles had to consult his colleagues, derived the legitimacy of his decision from them and was de facto bound by the general rules of the system. If Charles were to act without broader consent, his decision would be all but a paper one. (Steiger, Heinhard: *Völkerrecht versus Lehnsrecht? Vertragliche Regelungen über reichsitalienische Lehen in der Frühen Neuzeit*. In: Heinhard Steiger, *Von Der Staatengesellschaft Zur Weltrepublik?* (Studien Zur Geschichte Des Völkerrechts; 22; Baden-Baden: Nomos Verlag, 2009) XIII + 786 at 233-66). As a result, the power to grant the investiture in Italy, although it ought to be less restrained than within the Empire, where the Peace of Osnabruck applied, fell into the same category of formal and ritual respect, but material decline. See Barbara Stollberg-Rilinger, 'Le Rituel De L'investiture Dans Le Saint-Empire De L'époque Moderne: Histoire Institutionnelle Et Pratiques Symboliques', *Revue d'histoire moderne et contemporaine*, LVI/2 (2009), 7 at 3-29.

⁴⁷ E.g. "Demandes de sa sacrée majesté Imperiale et Catholique", N.A., S.P. France 78-174 (Cambrai 1725), ff. 44r-49v.

⁴⁸ N.A., S.P. Foreign 78-181 (France Jan-Jun 1725), Newcastle to Horatio Walpole, Whitehall, 1 May 1725, f. 106r.

⁴⁹ "Riperda parle ouvertement du mariage de Don Carlos comme d'une asseurée, et il dit que le Prince des Asturies est Etique, et qu'il ne peut pas vivre, l'on voit à quoi celà prepare..." (N.A., S.P. Foreign, 80-55 (Vienna 1725), St-Saphorin to Charles Townshend, private letter, Vienna, 11 May 1725, s.n.). Don Ferdinand (the later Ferdinand VI of Spain) was considered to be in a feeble state of both mind and body (Lucien Bély, *Les Relations Internationales en Europe (XVIIe-XVIIIe siècles)* (Paris: PUF, 1992) XXIII + 731 at 455).

⁵⁰ Franz Bosbach, *Monarchia Universalis. Ein Politischer Leitbegriff Der Frühen Neuzeit* (Schriftenreihe Der Historischen Kommission Bei Der Bayerischen Akademie Der Wissenschaften; 32; Göttingen: Vandenhoeck & Ruprecht, 1988) 183 at 64. Louis XV was thought to be in ill health at that time, as a consequence of the tremendous abdominal colic he suffered, caused by "an eating-debauch at the Muette, a little house belonging to the crown in the wood of Boulogne near Paris where His Most Christian Majesty often comes in an afternoon to take a collation of his own dressing. This last entertainment was of that kind, and it is prodigious the great quantity of melons, figgs and unripe walnuts that are said to have been devoured, besides an omelet, that the King and Count Clermont drest themselves, in which they put no less, as is reported, than fourscore

British ambassador St-Saphorin⁵¹ reported from Vienna in close cooperation with the French ambassador du Bourg⁵². The former interviewed Austrian *Hofkanzler* Sinzendorf personally on the observance of the balance principle, which the contracting parties had inserted the Treaty. The reference in art. III as “*duraturum in Europa aequilibrium [...] ut pro regula statuatur, nè Regna Galliae & Hispaniae [...] uniri possent*”⁵³ was deceptive. When asked by Saint Saphorin whether his manoeuvre would not bring “*de l’ombrage à l’Europe*”, the Court Chancellor replied “*il seroit bon que nous fussions réunis avec l’Espagne; car par là les choses seroient remises dans l’ancien système*”⁵⁴. In other words, Sinzendorf was satisfied to have constructed an entangling alliance between Madrid and Vienna, and possibly restored a dynastic encirclement of France⁵⁵. “*Ils veulent chercher à exciter de tous côtés des differens, afin de tenir, comme le dit fort plaisamment le marquis de Breille*”⁵⁶, boutique ouverte de mediations.”

III. The impossible package deal: the wrecking of the Congress

If the Congress of Cambrai did not succeed in uniting the two quarrelling powers, it was mainly due to the enormity of the *package deal* that announced itself. The Italian successions (cf. supra, note 46) were counterbalanced by the Emperor’s design to acquire the approval of his 1713 *Pragmatic Sanction* by all major European powers. Neither Charles VI, nor his brother Joseph I produced a legitimate male heir. Charles wanted to guarantee his succession to his eldest daughter Maria Theresia, both internally (in the state assemblies of the Habsburg composite monarchy) and externally (with the foreign courts). This was a consequence of the Utrecht logic, to make foreign states guarantee internal (French, Spanish, British) successions. However, France and Britain (through its connection with the Electorate of Hannover, which still belonged to King George) did not want to lose this opportunity to play politics within the Empire. As a third argument, the Emperor was under heavy pressure by the Maritime Powers (Britain/United Provinces) to suspend the patent of the Imperial Ostend Company, which had been granted the

eggs” (Robinson, embassy secretary, to Charles Delafaye, undersecretary of State, N.A., S.P. Foreign, 78-184, f.89r, quoted in L.G. Wickham Legg, *British Diplomatic Instructions; Vol. 4: France, 1721-1727* (Camden Third Series; 38; London: Royal Historical Society, 1927) XLII + 253 at XXII).

⁵¹ François Louis de Pesme, seigneur de St-Saphorin (1669-1737). Protestant Swiss diplomat (Geneva). In Austrian military service during the Turkish War (1683-1699), confidant of Eugen of Savoy. Left Vienna, angry with the intolerant catholic policy of Bishop Friedrich Karl von Schönborn, Imperial Vice-Chancellor. Served from 1716 as a diplomat for George I of Great Britain-Hannover.

⁵² Jean Baptiste du Bourg (1690-1728), French ambassador in Vienna, 1717-1725. See Jörg Ulbert, *Frankreichs Deutschlandpolitik Im Zweiten Und Dritten Jahrzehnt Des 18. Jahrhunderts* (Historische Forschungen; 79; Berlin: Duncker & Humblot, 2004) 494 at 441.

⁵³ Du Mont, VIII/2, No. XXXVI, 106. Philip V formally abandoned his rights of succession to the French throne by a unilateral declaration on 5 November 1712 (Du Mont, VIII/1, No. CXXXVI, pp. 310-312). Throughout his reign, there was discussion about their validity, since it was publicly known the monarch eyed the French throne, occupied by a monarch without heir until 1729 and the birth of a Dauphin.

During the 1719 invasion of Spain, Philip V inundated the French armies with leaflets asserting his rights to the French throne (Henry Kamen, *Philip V of Spain: The King Who Reigned Twice* (New Haven: Yale University Press, 2001) VII + 277 at 126). Already during the negotiations ending the War of the Spanish Succession, Jean-Baptiste Colbert de Torcy (1665-1746), Louis XIV’s Secretary for Foreign Affairs, held the declaration, drafted by jurists from the University of Oxford, to be contrary to the French *lois fondamentales* (see Baudrillart, Alfred : Examen des droits de Philippe V et de ses descendants au trône de France, en dehors des renonciations d’Utrecht. In : Revue d’histoire diplomatique III (1899), pp. 161-191, 354-384). On the conflict between lois fondamentales and treaties, see footnote 67.

⁵⁴ N.A., SP 80-55, Common Relation, *ibid*.

⁵⁵ Confirmed by count Palm in his conversation with St Saphorin (N.A., S.P. Foreign, 80-55 (Vienna 1725), St Saphorin to Townshend, Vienna, 11 May 1725, private letter, s.n.): “[...] nous avons rétabli l’ancien système, et nous avons séparé l’Espagne de la France, tellement que nous sommes en état de prendre à present avec Sa Majesté des mesures solides et efficaces contre cette dernière Puissance.”

⁵⁶ Envoy of the duke of Savoy.

monopoly of trade with the East Indies⁵⁷. This constituted the main reason why Britain could never agree to the Vienna alliance between Spain and Austria: if Philip V opened the American commerce to the Ostend Company, the British commercial position, defended by Parliament, was in danger.

Consequently, when the news of the Treaty leaked out, it was clear the Congress would not live on for long. The constitution of two antagonist power blocks rendered a solution almost impossible. When the Congress effectively broke up, the maxim on which all participants could agree was –as appeared from the conversation between Sinzendorf and Saint-Saphorin– the violation of the Balance of Power which had been established by the 1713 treaties. Withworth and Polwarth's impression of Sardinian ambassador Maffei is a good example. He “*looks upon the Balance of Italy to be render'd very precarious by this new agreement, and the abandoning entirely the interests of all the lesser Princes there; and consequently his Master's security to be pretty much weaken'd by it [...] The mortification will scarce be persona⁵⁸*”.

3. The War of the Polish Succession (1733-1738)

I. “*Drôle de guerre*” and “*drôle de traité*”

The conflict is often named as an example of the eighteenth-century “*guerre en dentelles*”, or *soft war*, where campaigns were calculated, the number of victims were minimal and the military operations in general not very decisive. For the current contribution, it has the interesting feature of separating France and Britain. Formally, France was at war with the Emperor and the Russian Czarina Anna⁵⁹, together with Savoy/Sardinia and Spain, who counted on the partition of the Habsburg possessions in Italy. The Diet of the Roman Empire declared war on the French⁶⁰, but without foreign funding, the electors and minor princes of Germany did not respect their military obligations. After barely two full campaigns (1734-1735), it was clear that the French could settle for peace with the Viennese court. The Preliminaries of Vienna, however, went far beyond what two parties could have settled between themselves. The document contained the blueprint for a considerable territorial swap on the continent⁶¹.

⁵⁷ Starting 1714 and extended in 1722, the Company (mainly run by foreigners) was destined to develop economic activity in the Austrian Netherlands. See Gerald B. Hertz, 'England and the Ostend Company', *English Historical Review*, XXII/86 (apr. 1907), 255, Michel Huisman, *La Belgique commerciale sous l'Empereur Charles VI : La Compagnie d'Ostende: Étude historique de politique commerciale et coloniale* (Bruxelles: Lamartin, 1902) XII + 555. The opening of the Spanish market in America went against the British commercial dominance agreed at Utrecht (e.g. *Asiento* or privilege for the introduction and sale of black slaves in Spanish America, Madrid, 26 March 1713, Du Mont VIII/1, No. CXXXIX, pp. 330-337).

From a legal point of view, the Dutch Republic denied the Emperor the right to start a commerce with the Indies from the Southern Netherlands, on the basis of art. V of the Spanish/Dutch Peace Treaty of Münster (30 January 1648), which forbade commercial undertakings in the Spanish Netherlands. These dispositions were confirmed by the Barrier Treaty of 15 November 1715 between Charles VI, George I and the States-General (Du Mont, VIII/1, No. CLXXX, pp. 458-468). However, Charles' jurists claimed the natural law principle of *mare liberum* –nota bene developed by Hugo Grotius against the Spanish and British opinions of *mare clausum*– overruled private treaties between nations (e.g. Jean Du Mont de Carels-Croon, *La vérité du fait, du droit et de l'intérêt de tout ce qui concerne le commerce des Indes, établi aux Pays-Bas Autrichiens par octroi de Sa Majesté Impériale et Catholique*. Mathieu Rognet (La Haye, 1723). On the subject and the role of the Flemish jurist Patijn and the continuous stream of pamphlets regarding the matter, see Frans De Pauw, *Het Mare Liberum Van Grotius En Pattijn* (Vlaamse Rechtskundige Bibliotheek; Nieuwe Reeks; Brugge: Uitgeverij voor Rechts- en Bestuurswetenschappen Die Keure, 1960) XI + 314.

⁵⁸ N.A., S.P. Foreign, 78-176 (Cambrai 1725), ff. 163v.-164r, Withworth/Polwarth to the Duke of Newcastle, Cambrai, 16 May 1725.

⁵⁹ Declaration of War, 11 October 1733.

⁶⁰ Declaration of War of the Diet of the Holy Roman Empire, 20 February 1734, see Karl Otmar Von Aretin, *Kaisertradition Und Österreichische Grossmachtpolitik (1684-1745)* (Das Alte Reich 1648-1806; Band 2; Stuttgart: Klett-Cotta, 1997) 578 at 340.

⁶¹ Preliminary Peace Treaty of Vienna between Charles VI and Louis XV, 3 October 1735, as communicated to the Maritime Powers, 3 January 1736, Jean Rousset De Missy, *Supplément au corps universel diplomatique du droit des gens*,

II. The British position

The British point of view needs to be approached having regard to traditional historical *garde-fous*: Waldegrave addressed himself to Whitehall in a situation where Franco-British relations were still cordial, but not vital any more. The Duke of Newcastle, Secretary of State for the Southern Department and Lord Harrington, his colleague from the Northern Department, aligned themselves much more with the Dutch Republic⁶². In 1731, Britain concluded the (Second) Treaty of Vienna, whereby George II guaranteed Charles VI the succession of his daughter Maria Theresia and urged the Emperor to admit don Carlos, Philip V's son, as his new vassal in the double duchy of Parma-Piacenza⁶³. This very much to the discomfort of France. Cardinal Fleury, *de facto* Louis XV's prime minister since 1726, was left aside and Britain seemed to have regained the Austrian orbit, like it had done between 1674 and 1715, during the wars against Louis XIV.

However, the Franco-British relation was certainly not one of enmity. Britain and the Dutch Republic refrained from intervening in the Polish Succession. They did not respect their alliance treaty with Charles VI and remained aloof from the war on the continent. France even astutely managed to secure a neutrality convention regarding the Austrian Netherlands, in order to avoid an intervention by the Maritime Powers⁶⁴. At court, Waldegrave tried to get his foot between the door. He could freely give his advice to Fleury and his foreign secretary Chauvelin⁶⁵, but could not prevent the passing of the core negotiations through a secret bilateral channel with Vienna.

III. Moderation and implicit presence in the general agreement

Without the formal participation of his Spanish and Sardinian allies, who jealously sat on their spoils, Fleury imposed *de facto* the reorganization of Italy. Austria lost its footing in the South, Naples entering under the rule of the infant don Carlos, but gained Parma and Piacenza. Tuscany went to Franz Stephan of Lorraine, who married Maria Theresia and could be elected Emperor after Charles VI's decease, but in turn transmitted his ancestral duchy, an all-time strategic liability for France, to Stanislas Leczynski, Louis XV's father-in-law, who was to leave it to France after his death. This last transaction was the only one which had anything to do with the succession in Poland, where the previous King August II's son Frederick III August was elected King by the Diet, to the detriment of Leczynski's pretensions.

However, in the light of what preceded, Fleury, Sinzendorf and Imperial jurist Bartenstein (1689-1767) could only negotiate this agreement respecting the Maritime Powers' interests and thus the majority of the Utrecht dispositions: no sole power was dominant in Italy (where Savoy, Spain and Habsburg divided

contenant un recueil des Traitez d'alliance de Paix, de Trêve, de Neutralité (Amsterdam: Janssons à Waesberghe, 1739) at 546-48. Execution Convention, 11 April 1736, *Ibid.*, 592-594.

⁶² Proposal of accommodation or pacification subsequent to an eventual approval of their good offices, done by the King of Great Britain and the States-General of the United Provinces, Vienna, 28 February 1735, Rousset, 529-531. Again, Horatio Walpole was the key figure as the resident in The Hague between 1734 and 1740. Relations between the Dutch Republic and Britain have always been tight when "Belgian" affairs were concerned. See Ragnhild Hatton, *Diplomatic Relations between Great Britain and the Dutch Republic, 1714-1721* (London: Published for the Anglo-Netherlands Society by East and West Ltd., 1950) 283, Olaf Van Nimwegen, *De Republiek Der Verenigde Nederlanden Als Grote Mogendheid : Buitenlandse Politiek En Oorlogvoering in De Eerste Helft Van De Achttiende Eeuw En in Het Bijzonder Tijdens De Oostenrijkse Successieoorlog (1740-1748)* (Amsterdam: Bataafsche Leeuw, 2002) 496, Horatio Walpole and John Joseph Murray, *Honest Diplomat at the Hague. The Private Letters of Horatio Walpole, 1715-1716* (Indiana University Publications. Social Science Series, No. 13; London: Ayer Publishing, 1971 [1955]) 394 at 67-77.

⁶³ Treaty of Alliance between Charles VI and George II, Rousset, 288-294.

⁶⁴ Neutrality Treaty between Louis XV and the States-General, 24 November 1733, See Olaf Van Nimwegen, *De Republiek Der Verenigde Nederlanden Als Grote Mogendheid : Buitenlandse Politiek En Oorlogvoering in De Eerste Helft Van De Achttiende Eeuw En in Het Bijzonder Tijdens De Oostenrijkse Successieoorlog (1740-1748)* (Amsterdam: Bataafsche Leeuw, 2002) 496.

⁶⁵ N.A., S.P. Foreign, 78-203 (France 1732-1733), part 2, s.n., 26 October 1733, embassy secretary to the Duke of Newcastle, Fontainebleau, 26 October 1733.

North and South) and the Austrian Netherlands remained untouched. In this respect, the Cardinal remained loyal to the general system and even enforced the overall norm hierarchy between treaty and internal constitutional dispositions. Whereas the question of sovereignty over Parma/Piacenza and Tuscany was still obscure in 1718, it was no longer the case in 1735. No mention at all was made of the Emperor's right to appoint new vassals or of internal norms. The sole legitimacy of the settlement derived from acquiescence of Powers *qui prendront part à la Pacification*⁶⁶. In this sense, the most contradictory episode of the three treated above, expressed in the best possible way how the system functioned. Internal matters ceased to exist once the interests of another power were involved. They were lifted to a higher level and solved through negotiation. Consequently, the norms ruling these situations acquired a superior position, above the *lois fondamentales* or the Imperial constitution⁶⁷.

Conclusion: stability through anti-hegemony ?

In the long run, historic experience of Spanish and French hegemony showed that there was no alternative to decentralized cooperation. The most convincing arguments between the parties were those of adherence to the Utrecht Treaties. Brute force remained, of course, as a determinant, but was softened by the legal discourse in place. A "*Paix imposée*" or punitive peace was out of the question, as we have seen in the cases of the Spanish invasion (which could have been punished much more seriously by France and Britain, in view of the military imbalance with Spain), the Ripperda Treaty (where the imperial-Spanish bloc disintegrated through negotiations) or with the Peace of Vienna in 1735-1738 (where France grasped the opportunity to settle ongoing differences with the Emperor, defeated him but did not humiliate him), reason and negotiation formed the core of the European system's stability. Only minor changes were made to the 1713 settlement. How they came about, can only be understood by looking into diplomatic correspondence. Moreover, to grasp to what extent and to which norms the parties attached the most importance, can only be revealed by looking through the same lens, revealing the day-to-day management of the international system.

I would to terminate this contribution with a quotation from Professors Howse and Teitel from New York University. In their recent research paper "Beyond Compliance: Rethinking Why International Law Really Matters"⁶⁸, they want to formulate an answer to Goldsmith and Posner's "negationist" statements formulated in *The Limits of International Law*, questioning the effectiveness or normative reach of international law as a legal system without "hard norms"⁶⁹. The normativity problem is as old as international law itself and has always given rise to debate between "naturalists" and "positivists", or "utopists" and "apologists". I find it particularly fitting for the period discussed above. In essence, the

⁶⁶ Preliminaries of Vienna, as communicated to the Maritime Powers, Rousset, 547: *Art. II. Le Grand-Duché de Toscane, après la mort du présent Possesseur, appartiendra à la Maison de Lorraine, pour l'indemniser des Duchez qu'Elle possède aujourd'hui. Toutes les Puissances, qui prendront part à la Pacification, lui en garantiront la Succession éventuelle. Art. III. [...] Les Royaumes de Naples & de Sicile appartiendront au Prince qui en est en possession, & qui en sera reconnu Roi par toutes les Puissances qui prendront part à la Pacification. Art. V. [...] En outre, lui [Charles VI] seront cédés en pleine Propriété les Duchez de Parma & de Plaisance.*

⁶⁷ As an illustration of this in doctrine, Réal de Curban fustigated the "erroneous opinion" of amongst others Jean Bodin, to place internal constitutional norms above treaties, as a way to escape to treaty obligations. "*Si son opinion étoit fondée, ceux qui ne sont les chefs d'un gouvernement aristocratique ou démocratique, que pour un temps & seulement comme simples administrateurs, pourroient encore moins que les Rois de France & les autres Monarques absolus, obliger leurs successeurs; mais cette opinion est insoutenable. De ce qu'un Souverain a le droit de faire la guerre & celui de conclure la paix, il suit que toutes les cessions qu'il fait, lient & ses sujets & ses successeurs.*" (Réal de Curban V, Ch. III, Sect. V, art. V, 620-621).

⁶⁸ Robert Howse and Ruti Teitel, 'Beyond Compliance: Rethinking Why International Law Really Matters', *New York University School of Law Public Law & Legal Theory Research Paper Series. Working Papers*, X/08 (Feb. 2010), 1.

⁶⁹ Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (New York: Oxford University Press, 2005) 262.

discussion comes down to whether or not one believes international law influences the behaviour of its primary subjects, states. If one can challenge the force of even present-day international law, embedded in universal and regional institutions, in supranational parliaments, human rights courts and even criminal courts, this is rather encouraging for the historian of international law in the Ancien Régime, where such institutions did not even exist.

Howse and Teitel underlined that norm compliance does not only derive from formal instruments. And that, vice versa, international law has a function as a discourse itself. It is the commonly accepted vector to formulate unilateral claims, and to mend them to what is acceptable to the others. This is a political, as well as a material legal function:

The language of [international] law communicates a level of "seriousness" to a commitment that may have consequences for how other actors respond in their own behavior and the reputational consequences of renegeing these commitments. States tend to want to justify their actions in universalist terms, and the language of law is particularly amenable to it, given its formal character. States need to water down their rhetoric appeal to more and more audiences and "law" that does not have such a content tied to particular religious, moral or civilizational outlook serves well this purpose⁷⁰.

The European system is often presented as an instable one, animated by perpetual strife for dominance between short-sighted big powers. Historical experience, however, learned the parties in play between 1713 and 1739 that, although they still cultivated the model of a fiscal-military state, accommodation through reason and the respect of mutual principles could lead them to a decentralized, but stable power architecture. The same language used three or four decades earlier, gained in rhetorical and argumentative strength and became a vector for the upholding of the Treaties. However, on the basis of the sole Treaty texts, party interaction through a commonly accepted framework of norms and concepts, such as the balance, mediation or collective security-agreements, remains abstract and difficult to grasp. The answers lie in the archival sources and can be discovered with the help of the established methods from diplomatic history.

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⁷⁰ Howse and Teitel, 23.

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Annex: Cartography

[I have taken the liberty to insert two maps. They are intentioned, for the reader's greater comfort, to clarify the above mentioned situations. They will be projected during my presentation in Uppsala as well]



1. Four power-situation in Europe at the Peace of Utrecht, 1713 – George I/Louis XIV/Philip V/Charles VI; the 1718 Quadruple Alliance swaps Sardinia for Savoyard Sicily.



2. Italian situation, Treaty of Vienna, 1735-1738, with the Infant Carlos in Naples, Charles VI in Parma/Piacenza and Franz Stephan in Tuscany.

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